

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Adoption of Board Order ER-08-08, revisions to NR 27, relating to the list of Endangered and Threatened Species

FOR: JANUARY **BOARD MEETING**

TO BE PRESENTED BY: Sumner Matteson, BER Avian Ecologist

SUMMARY:

The Department's recovery programs for Trumpeter Swans and Osprey have been very successful. The statewide populations of these two species have increased to the point where they no longer qualify as Endangered or Threatened Species. Trumpeter Swan and Osprey recovery in Wisconsin was made possible through the generous cooperation of dozens of corporate, environmental, and private partners, as well as state, tribal, and federal participants. Officially removing these species from the list of Endangered and Threatened Species will give the Board an opportunity to acknowledge the contributions of all partners. A hearing was held on October 20, 2008, in Madison, to solicit comments on the proposed delisting of these species. Four citizens attended the hearing. Two of the four testified in support of the proposal, one indicated keeping the Trumpeter on the list, and one did not indicate a preference. Of eight emails received, four congratulated the Department on its success, two were against delisting, one advocated that all swans need protection, and one suggested that more financial resources be given to the Bureau of Endangered Resources to "assure the health and success of all species that surround us."

RECOMMENDATION: The Department recommends that the Board approve delisting Trumpeter Swan and Osprey and to proceed with the delisting process.

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

Signe L. Holtz
Bureau Director,

Julie Stunder
Administrator,

Matt Frank
Secretary, Matt Frank

12/16/08
Date

12/18/08
Date

12/30/08
Date

DATE: December 30, 2008

TO: Natural Resources Board Members

FROM: Matthew Frank

SUBJECT: Amend NR 27 to Remove the Trumpeter Swan from the Endangered Species List and Osprey from the Threatened Species List

The Department's recovery programs for Trumpeter Swan and Osprey have been very successful. The statewide populations of these two species have increased to the point where they no longer qualify as Endangered or Threatened Species.

A hearing was held on October 20, 2008, in Madison, to solicit comments on the proposed delisting of these species. Four citizens attended the hearing. Two of the four testified in support of the proposal, one indicated keeping the Trumpeter Swan on the list, and one did not indicate a preference. Of eight emails received, four congratulated the Department on its success, two were against delisting, one advocated that all swans need protection, and one suggested that more financial resources be provided to "assure the health and success of all species that surround us."

Rule Summary-Trumpeter Swan

The Department wrote a recovery plan for the Trumpeter Swan in 1986 (Matteson *et al.* 1986), establishing a recovery goal of at least 20 breeding and migratory pairs by the year 2000. Implementation of the plan first focused on cross-fostering using Mute Swans already in the wild as foster parents during 1987 and 1988, while Department biologists waited in line behind the State of Minnesota to collect Alaskan Trumpeter Swan eggs. Cross-fostering was not successful largely due to heavy snapping turtle predation of the young cygnets.

From 1989 through 1997, Endangered Resources staff (Randy Jurewicz and Sumner Matteson) collected a total of 385 Trumpeter Swan eggs from wild nests in Alaska. These were transported back to Milwaukee by Terry and Mary Kohler and were hatched out in incubators at the Milwaukee County Zoo. Cygnets were placed in two programs: the decoy-rearing program (cygnets imprinted on a life-sized decoy, then flown at less than a week of age to marsh sites in northern and central Wisconsin where UW-interns in camouflaged float tubes led cygnets to feeding and loafing patches); and in the captive-rearing program (cygnets maintained at a site near Pewaukee owned by General Electric Medical Systems until they reached 2 years of age which were then released at selected wetland sites in northern Wisconsin). A total of 355 swans were released via these two techniques. A third technique of lesser importance was captive parent-rearing, where a few captive pairs of swans produced cygnets that were released as yearlings at selected marsh sites in northern Wisconsin. A total of 32 swans were released via this technique.

Between 1997 and 2007, Department staff monitored the state's growing flock annually. During this period, more than 50 young were produced annually and adult survivorship was high. By 2007, 113 breeding pairs occurred in 19 counties (see attached figures). As a result of this population growth, the Natural Heritage Inventory now shows that the population is apparently secure in Wisconsin. The population status rank or S rank is revised from S3B (meaning 20 to 100 breeding occurrences) to S4B (meaning apparently secure in Wisconsin).

On October 11, 2007, the Wisconsin Trumpeter Swan Recovery Program was awarded a 2007 *Leopold Restoration Award: the John Nolen Award for Excellence in Ecological Restoration Practices*. The dedicated work of several wildlife managers and technicians, Endangered Resources and Science Services staff, the Milwaukee County Zoo, and the UW-Department of Wildlife Ecology helped make this possible, along with the support of the Natural Resources Foundation, Inc. and several other organizations, businesses, and private individuals. Most of these individuals and organizations/businesses were able to attend a party in their honor held at the Milwaukee County Zoo on 31 March 2007 and received Certificates of Appreciation for Exceptional Performance from the Department.

Rule Summary - Osprey

Osprey were one of the raptor species whose populations were decimated by DDT. In the early 1970s the state's nesting population numbered fewer than 100 pairs. Osprey were state listed as Endangered in 1972. In 1986, a comprehensive Osprey Recovery Plan was developed by the Department. The goal was to maintain a self-sustaining Osprey population in suitable habitat throughout Wisconsin. Two objectives were identified to meet that goal:

1. Maintain statewide production at a minimum of 1.2 young per active nest
2. Increase the number of known active nests to 300.

Four major activity categories were identified:

1. Determine current population and habitat status
2. Determine population and habitat needed to achieve recovery.
3. Protect, enhance, and increase osprey population and habitats.
4. Establish and maintain communication with all interested groups and conduct public education.

Staff from Wildlife Management and Endangered Resources has been conducting yearly statewide surveys of Osprey population and reproduction by fixed-wing aircraft. Results are presented in the bar graph and map below (Eckstein).

Ospreys choose dead tree "snags" to build their nests on. Because these snags are no longer present in sufficient numbers in Wisconsin to support the birds, an ambitious DNR project was begun in 1972 to provide artificial nesting platforms. Active nest numbers have been at or above 300 since 1989. They held at a plateau of just under 400 pairs from 1993 to 2002 and have been above 400 pairs since 2003. As a result of this population growth, the Natural Heritage Inventory now shows the population as apparently secure in Wisconsin. The population status rank or S rank is revised from S3 to S4B (meaning apparently secure in WI).

In 1989 the nesting population reached 300 pairs and the species was down listed to Threatened.

As of 2007 survey data, the first objective (productivity) has been closely approached with an average production of 1.18 young per active nest for the last 7 years.

Of continuing concern is the fact that natural nesting habitat for Ospreys remains scarce in the state. Preserving natural nest sites (snags) in waterways and wetlands should occur wherever possible. At least 84% of the nests are now on man-made structures, most of them on artificial platforms. These platforms require periodic maintenance, repair, and replacement. Wisconsin's large Osprey population now need

more nesting sites than are available naturally and are using cell phone towers, ball field lights, power poles, and other human structures. Continued monitoring of platforms and relationships with energy companies are essential to ensure that Ospreys continue to thrive in Wisconsin. In addition, loss of natural nesting habitat should be prevented to the fullest extent possible.

Summary of Impacts to Those Affected By Proposed Rule

The Endangered Resources Fund pays for damage done by Endangered and Threatened animal species and gray wolves. Damage done by Trumpeter Swans and Osprey would no longer be eligible for reimbursement once they are delisted. The Endangered Resources Damage Payment Program has paid for Osprey damage to one private trout farm in Marinette County in 2003 (\$ 2,100.00), 2004 (\$ 600.00), 2005 (\$ 2,000.00) and 2006 (\$ 2,000.00). Once Osprey is no longer listed, however, permits may be issued by the U.S. Fish & Wildlife Service for the removal of individual birds causing damage.

Rule Development

These proposed amendments were developed by the Bureau of Endangered Resources with the assistance of Legal Services and with input from the Department's Swan Management Committee and Eagle-Osprey Management Committee. A hearing was held on October 20, 2008, in Madison, to solicit comments on the proposed delisting of these species. Four citizens attended the hearing. Two of the four testified in support of the proposal, one indicated keeping the Trumpeter Swan on the list but did not say why, and one did not indicate a preference. One of the supporters of delisting, however, agreed with a major point of the public presentation: It is necessary to continue monitoring and maintaining Osprey nesting platforms on power lines, and maintaining relationships with energy companies to ensure that Osprey continues to thrive in Wisconsin.

Of eight emails received by the close of written public comments on October 29, 2008, four congratulated the Department on a job well done, two were against delisting, one strongly advocated that all swans need protection, and a fourth expressed concerns about mercury and lead poisoning and suggested that more financial resources be provided to "assure the health and success of all species that surround us." Of the two emails received against delisting, one gave no reason, but both advocated for Trumpeter Swans to remain on the list. The second email listed the following reasons: "1) Global Warming will endanger all animals and birds. One out of four will become extinct from climate changes. 2) Loss of habitat – builders have encroached on their nesting sites. 3) Turtles and other predators take many of the cygnets. 4) Lead from shotguns kills many birds and this will eventually harm the swans as well." Fortunately, none of these factors—while ongoing concerns—have prevented the steady population growth in the Trumpeter Swan breeding population over the past decade. If climate change and factors such disease or lead poisoning prove to be limiting factors and contribute to a population decline, the Department can re-list the Trumpeter Swan.

In summary, six citizens (50%) were in support of delisting, three (25%) were against delisting, one strongly stated that all swans need protection, one did not indicate a preference, and one expressed concerns about mercury and lead poisoning and felt the solution was to provide more financial resources to endangered resources management.

Legislative Council Rules and Clearinghouse Report

The Wisconsin Legislative Council Rules Clearinghouse sent a report (attached) on the proposed rule to the Department on September 18, 2008. Revisions to the proposed rule were made based on the report.

Environmental Analysis

The Office of Energy has determined that these rule revisions are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

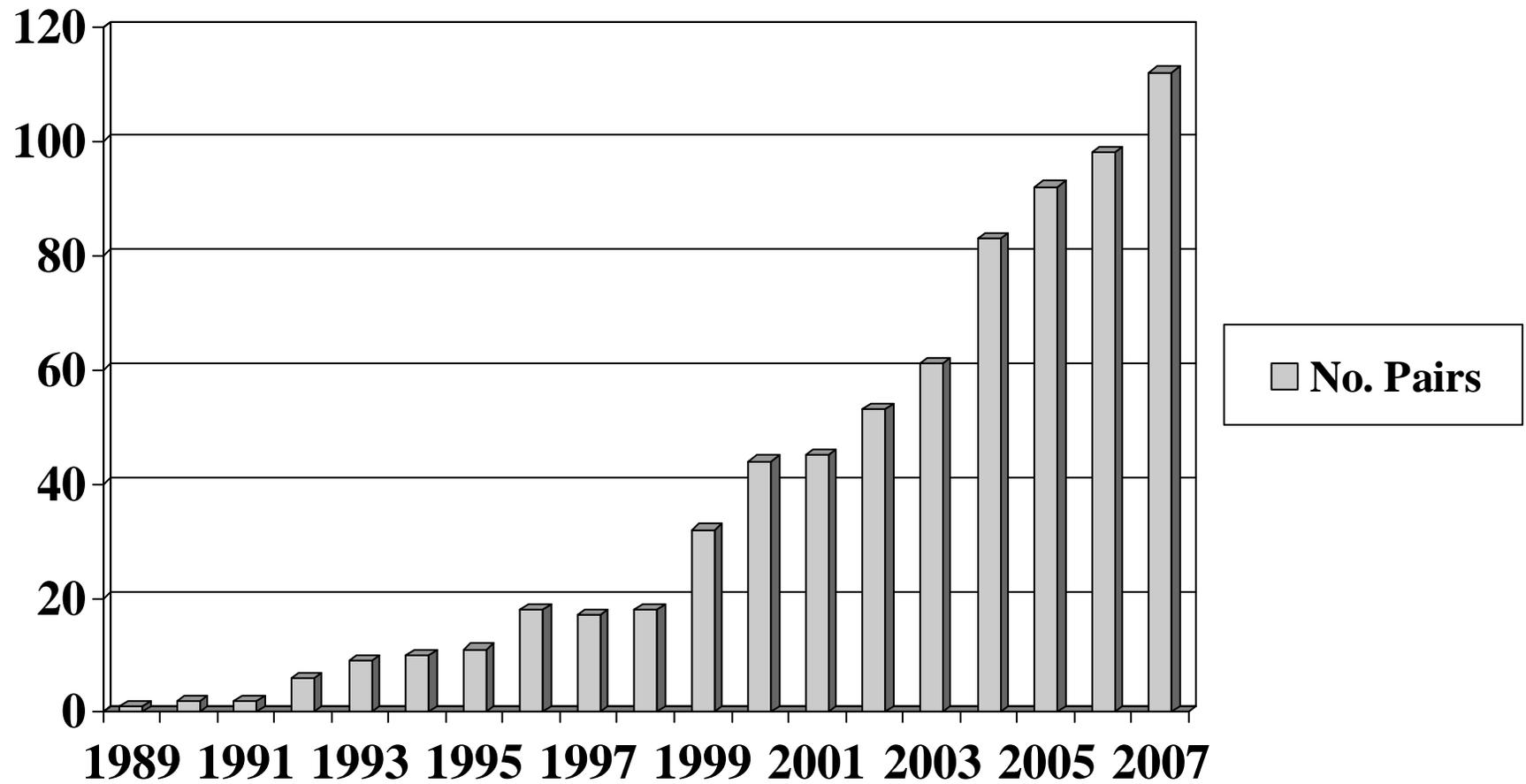
Initial Flexibility Analysis

The proposed revision to ch. NR 27, Wis. Adm. Code, pertains to rules that list plant and animal species that are Endangered and Threatened in Wisconsin. These rules are applicable to the general public but impose no compliance or reporting requirements for small businesses nor are any design or operation standards contained in the rule. Therefore, under s.227.19(3m), Stats., a final regulatory flexibility analysis is not required.

Recommendation To The Board On The Proposed Rule

The lack of public response (as indicated by only 12 respondents—emails and public appearances) to the proposed rule suggests that the public generally supports delisting these two species. Of the few responses received, 50% were in favor and 25% were against, with the remainder not taking a position on the proposed rule for or against delisting. Accordingly, the Department recommends that the Board approve delisting and proceed with the delisting process.

WI Trumpeter Swan Nesting Pairs, 1989-2007



Distribution Of WI Trumpeter Swan Nests, 2007



• <u>Counties</u>	<u>No. Nests</u>
• DOUGLAS	4
• BAYFIELD	2
• ASHLAND	4
• IRON	10
• VILAS	3
• SAWYER	3
• PRICE	1
• WASHBURN	3
• BURNETT	29
• POLK	28
• ST. CROIX	3
• BARRON	1
• RUSK	1
• JACKSON	1
• WOOD	7
• JUNEAU	8
• MONROE	2
• GRANT	2
• WAUKESHA	<u>1</u>
• TOTAL:	113

Fiscal Estimate — 2007 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number Bill Number	Amendment Number if Applicable Administrative Rule Number
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Subject

Proposed rule amendment to remove trumpeter swans from the state endangered species list and osprey from the state threatened species list.

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs

Indeterminate

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The removal of these two birds from the state list of endangered and threatened species will not have a fiscal effect.

Long-Range Fiscal Implications

None

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	12/15/2008

Fiscal Estimate — 2007 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number

Subject

Proposed rule amendment to remove trumpeter swans from the state endangered species list and osprey from the state threatened species list.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$ 0	\$ - 0
B. State Costs by Source of Funds			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$ 0	\$ - 0

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 0	\$ 0

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	12/15/2008

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 27.03(2)(b) 2 and NR27.03 (3)(b)8 relating to the Wisconsin lists of Endangered and Threatened Species.

ER-08 -08

Analysis Prepared by Department of Natural Resources

Statutory Authority: Statutes that authorize the promulgation of this rule include ss. 29.604 and 227.11, Stats. These sections grant rule-making authority to the Department to protect endangered and threatened species. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted: In promulgating this rule, ss. 227.11, and 29.604, Stats., have been interpreted as allowing the Department the authority to develop rules to add and remove species from the endangered and threatened species lists.

Explanation of Agency Authority: This rule supports Department policy and underscores statutory authority (ss. 29.604 and 227.11, Stats.) to list only species that are proven to be endangered or threatened and to remove from the list species that have recovered and are no longer threatened or endangered.

Related Rule or Statute: SS. NR 27.03(2)(b)2 and (3)(b)8, Wis. Adm. Code, and ss. 227.11 and 29.604, Stats.

Plain Language Rule Analysis: The Department's recovery programs for Trumpeter Swan and Osprey have been very successful. The statewide populations of these two species have increased to the point where they no longer qualify as Endangered or Threatened Species.

Trumpeter Swan

The Department wrote a recovery plan for the Trumpeter Swan in 1986 (Matteson *et al.* 1986), establishing a recovery goal of at least 20 breeding and migratory pairs by the year 2000. The reintroduction effort was very successful and the Wisconsin population has increased from zero in 1986 to 113 breeding pairs occurring in 19 Wisconsin counties in 2007.

Osprey

Osprey were one of the raptor species whose populations were decimated by DDT in the 1950's and 1960's. In the early 1970's the state's nesting population numbered fewer than 100 pairs. Osprey were state listed as Endangered in 1972. Due to the management program, the statewide population increased to just under 400 pairs from 1993 to 2002 and have been above 400 pairs since 2003.

Federal Regulatory Analysis: Trumpeter Swans and Osprey have never been on the U.S. list of Endangered and Threatened Species under the authority of the U.S. Endangered Species Act. They are protected by the U.S. Migratory Bird Treaty Act.

State Regulatory Analysis: The proposed rule changes are non-controversial in nature and do not represent policy or significant changes that differ from surrounding states. Several states in the Midwest continue to list Trumpeter Swans and Osprey as endangered or threatened. Trumpeter Swans are listed as state endangered in Indiana and Ohio, and as state threatened in Michigan and Minnesota. Ohio, Michigan, and Minnesota have active restoration programs. This species is listed as extirpated in Illinois and Missouri. The species is not listed in Iowa, where an active reintroduction program began in 1994.

The Osprey is listed as state endangered in Illinois and Indiana, and as state threatened in Michigan and Ohio. Active recovery programs occur in these states, except for Illinois. It is not listed in Iowa and

Minnesota, where reintroduction projects have occurred, and it is also not listed in Missouri, where the state Natural Heritage Inventory keeps track of occurrences.

Wisconsin is fortunate to have had such successful recovery programs for both species.

Summary of Factual Data: The proposed rule changes are based on field surveys of the subject bird species in Wisconsin from 1973 to the present..

Anticipated Private Sector Costs: These rules do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

SECTION 1. NR 27.03(2)(b) 2 is repealed.

SECTION 2. NR27.03 (3)(b)8 is repealed.

Section 3. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Section 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)